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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 ----- X
4 GMA ACCESSORIES, INC.
5 Plaintiff, Civil Action No.
6 07CIV8414(LAK)
7 EPARTNERS, INC.,
8 Defendant.
9 ----- X
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11
12 EXAMINATION BEFORE TRIAL OF JEFFREY PLOSHNICK,
13 a witness called by the Plaintiff, pursuant to Subpoena,
14 held at The Bostany Law Firm, 40 Wall Street, New York,
15 New York, on March 3, 2008, at 10:00 a.m., before a
16 Notary Public of the State of New York.

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21 BARRISTER REPORTING SERVICE, INC.

22 120 Broadway

23 New York, NY 10271

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2 A P P E A R A N C E S:

3 3 08GMA

4 THE BOSTANY LAW FIRM
5 Attorneys for Plaintiff
6 40 Wall Street
7 New York, New York 10005

8
9 BY: JOHN BOSTANY, ESQ.

10 THELEN REID BROWN RAYSMAN & STEINER, LLP
11 Attorneys for Defendant
12 875 Third Avenue
13 New York, New York 10027

14 BY: PETER BROWN, ESQ.

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J. Ploshnick

1 JEFFREY PLOSHNICK, after stating his
2 residence as 67 West Valley View Drive,
3 Morristown, New Jersey 07960, was duly
4 sworn and testified as follows:

5 EXAMINATION BY

6 MR. BOSTANY:

7 Q Mr. Ploshnick my name is John Bostany. I
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8 represent the Plaintiff GMA Accessories in a case
9 that was filed in federal court against Defendant
10 EPartners.

11 Are you represented by an attorney?

12 A I do have Counsel, but not for this.

13 Q You very personal counsel for other
14 things?

15 A Yes.

16 Q Who is that?

17 A His name is Lawrence Ross of Brussler,
18 Amler & Ross (phonetic).

19 Q Do you want an opportunity to adjourn
20 today's proceedings?

21 A No, I am ready to go.

22 Q Just for the record, I noticed the
23 attorneys for the Defendant, both the New York
24 attorneys and the Texas attorneys for the Defendant
25 some time ago as well as filed a subpoena and the

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J. Ploshnick

1 docket sheet with the clerk of the Southern
2 District. We attempted to obtain confirmation
3 whether they would be coming and have been
4 unsuccessful, and they are not here and have not
5 replied to us in that regard.

6 Now if you don't understand a
7 question Mr. Ploshnick, please feel free to ask me
8 to rephrase the question. If you would like to take
9 a break at any time, feel free to do that. If you
10 would like to stop the deposition at any time to
11 consult counsel, we can talk about that. I think

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12 you have a right to do that, I have to look at the
13 rules.

14 A My Counsel did tell me he'd like me to do
15 that, if that should happen.

16 Q Okay, I think I can accommodate that. Let
17 me ask you this, are you currently employed?

18 A I currently have a job, not with
19 EPartners.

20 Q Where are you employed?

21 A I own a small company, it's called Cross
22 Road Partner, 11 Penn Plaza and there are offices in
23 Waltham Massachusetts, Stamford Connecticut, North
24 Carolina and Mississippi.

25 Q What kind of a company is that?

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J. Plosnick

1 A It's a business consulting firm.

2 Q Now were you contacted by the attorneys
3 for the defendant?

4 A Yes.

5 Q Who contacted you?

6 A Anthony Lowenberg.

7 Q And was that after you were served with
8 the subpoena?

9 A Yes.

10 Q Anyone else?

11 A No.

12 MR. BOSTANY: Off the record.

13 (Whereupon, there was a pause in the
14 proceedings.)

15 Mr. Brown has just arrived.

16 MR. BROWN: Good morning.

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17 MR. BOSTANY: Mr. Brown, we just asked a
18 couple of questions regarding Mr. Ploshnick's
19 background.

20 MR. BROWN: Let the record reflect that
21 the deposition was started without me.

22 Can we begin with some examination, first
23 of all, do you have counsel here today?

24 THE WITNESS: No.

25 MR. BROWN: Did Anthony Lowenberg contact

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J. Ploshnick

1 you to tell you we were going to represent you?

2 THE WITNESS: No, he didn't contact me nor
3 would I want any EPartner representation.

4 MR. BROWN: Are you here without counsel?

5 THE WITNESS: Absolutely.

6 MR. BROWN: I'd like to warn you we are
7 about to call the Court, because we feel this
8 should be terminated at this point. You may
9 have to come back again, do you understand
10 that?

11 THE WITNESS: I understand what you are
12 saying.

13 MR. BROWN: Have you been contacted by
14 Plaintiff's counsel several times?

15 THE WITNESS: No.

16 MR. BROWN: How many times have you spoken
17 to them?

18 THE WITNESS: Just to confirm, twice.

19 MR. BOSTANY: You didn't speak to me ever.

20 THE WITNESS: No, not to you. I spoke to

21 confirm that I'd be here this morning.

22 MR. BOSTANY: Mr. Brown, I don't
23 appreciate you slamming things on the table and
24 I don't appreciate you standing and hovering
25 over the witness in a threatening manner.

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J. Ploshnick

1 Please sit down, please sit down. This is a
2 civilized room, this is a civilized proceeding.
3 Do not stand over the witness in an
4 intimidating manner.

5 MR. BROWN: I am not intimidating the
6 witness.

7 MR. BOSTANY: Please sit down, please sit
8 down, Mr. Brown. I understand you are upset
9 that the witness declined your representation,
10 but you are not permitted to intimidate the
11 witness. Please move away from witness, you
12 are right on top of him, Mr. Brown.

13 Mr. Ploshnick --

14 MR. BROWN: I have notified the Court
15 based upon a letter sent to the Court today
16 that we are contacting Judge Kaplan, and we
17 will now call Judge Kaplan chambers. I am
18 calling this deposition to a halt until we
19 speak to Judge --

20 MR. BOSTANY: Sir, you have had notice of
21 this deposition for weeks. The fact that you
22 attempted to reach the Judge this morning, or
23 last night, which was Sunday, is irrelevant.
24 Judge Kaplan does not work on Sunday as far as
25 I know and I doubt very much that you had an

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J. Ploshnick

1 ex-parte conversation with Judge Kaplan last
2 night.

3 Is that your representation, sir, that you
4 spoke to Judge Kaplan last night?

5 MR. BROWN: We submitted written notice to
6 the Court that we were going contact him and we
7 submitted second notice to the Court and we
8 have been in touch with chambers this morning
9 through my associate and he is expecting our
10 call.

11 MR. BOSTANY: Judge Kaplan does not work
12 Sunday nights and I doubt very much he is
13 interested in receiving emergency letters on
14 proceedings that you had notice of and I don't
15 think it's proper practice, sir, for you to
16 show up in the middle of a deposition --

17 MR. BROWN: No, it's the start of the
18 deposition, you started without my presence.

19 MR. BOSTANY: You didn't tell us you were
20 coming and the deposition was scheduled to
21 proceed 30 minutes ago and you didn't arrive,
22 you didn't show up, you didn't answer our calls
23 to confirm. You completely ignored and acted
24 as if Rule 45 didn't apply to you, Mr. Brown.

25 MR. BROWN: That is absolutely false.

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J. Ploshnick

1 MR. BOSTANY: You didn't show up, you
2 didn't answer our calls, and you didn't show up

4 MR. BROWN: We notified you in writing
5 about appearing.

6 MR. BOSTANY: Let's do this, let's
7 accommodate Mr. Brown's emergency request to
8 call Judge Kaplan.

11 THE DEPUTY CLERK: Hello.

12 MR. BROWN: This is Peter Brown calling.
13 I submitted a letter to Judge Kaplan today with
14 respect to a deposition which is currently --
15 which we are sitting at right now. There is a
16 significant dispute over whether this
17 deposition should, in fact, go forward and we
18 ask the Court's intervention.

19 THE DEPUTY CLERK: How did you send the
20 letter?

21 MR. BROWN: It was sent by fax and also by
22 ECF.

23 MR. BOSTANY: Andrew, this is John
24 Bostany --

25 THE DEPUTY CLERK: Hold on.

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J. Ploshnick

1 MR. BOSTANY: We just got caught off.

(Whereupon, a second phone call was placed to the chambers of Judge Kaplan.)

4 Hello, it's John Bostany.

5 THE DEPUTY CLERK: What is the Plaintiff's
6 name?

7 MR. BROWN: GMA Accessories against
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8 EPartners, docket number --

9 THE DEPUTY CLERK: Hold on one second. I
10 don't write that fast. Docket Number?

11 MR. BOSTANY: 07Civ8414.

12 THE DEPUTY CLERK: For plaintiff is?

13 MR. BOSTANY: John Bostany, the Bostany
14 Law firm.

15 THE DEPUTY CLERK: And for the Defendant?

16 MR. BROWN: Peter Brown, Thelen, Reid
17 Brown, Raysman and Steiner.

18 THE DEPUTY CLERK: Counsel, hold on one
19 second, the Judge is going to pick up.

20 THE COURT: Hello.

21 MR. BROWN: Hello, Judge Kaplan this is
22 Peter Brown and John Bostany.

23 THE COURT: Good morning, I've read
24 Mr. Brown's letter, for future reference, no
25 electronic filing of letters folks, but I read

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J. Ploschnick

1 the one you faxed in this morning.

2 MR. BROWN: Thank you, your Honor.

3 THE COURT: Mr. Bostany, what excuse could
4 there have been for going forward with this?

5 MR. BOSTANY: This is a deposition that we
6 noticed several weeks ago, I think three or
7 four week ago. We filed the proof of service
8 on the clerk docket sheet about three weeks
9 ago. We informed the Defendant's attorneys
10 that this was noticed for today and the witness
11 was available.

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12 The attorneys for the Defendant objected
13 indicating that they would not produce the
14 witness and that they were representing the
15 witness. The witness called here and indicated
16 that the Defendant's attorneys were not
17 representing him and that he did not want the
18 subpoenaed deposition postponed or cancelled,
19 so we attempted to proceed -- we proceeded. We
20 have the court reporter here, the witness
21 showed up and said to Mr. Brown in the face of
22 his pointed questioning that Mr. Brown was not
23 his attorney. Mr. Brown slammed his notebook
24 on the table and said hasn't my firm contacted
25 you and notified you that we are going to be

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1 representing you and Mr. Ploshnick, the
2 witness, said yes, I was contacted, but I
3 indicated that I don't want your firm to
4 represent me and I would like to proceed with
5 the questioning, and this is -- it's done
6 pursuant to the rules, we have done everything
7 correct.

8 There was a previous deposition that we
9 had scheduled in Connecticut that issued out of
10 the District of Connecticut that is subject of
11 another application that was sent in by mail to
12 Your Honor on Friday, Judge. It doesn't have
13 to be addressed today, but that was pertaining
14 to a subpoena deposition that the Defendant's
15 attorneys were successful in cancelling. It
16 was scheduled to take place in early February,

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17 it was noticed in early January and the
18 Defendant's attorney said --

19 THE COURT: Mr. Bostany if we not dealing
20 with it today, why do we have take time with
21 this?

22 MR. BOSTANY: Okay, that's correct Judge,
23 so that's where we are.

24 THE COURT: When did you notice this
25 deposition?

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J. Ploshnick

1 MR. BOSTANY: This deposition was noticed
2 in early February. I don't the exact date
3 here, but the Affidavit of Service is -- it's
4 the most recently filed -- I guess the second
5 most recently filed document on the docket
6 sheet at this point.

7 THE COURT: I see that, so February 15.

8 MR. BOSTANY: That's when it was filed, I
9 think it was noticed the week before that.

10 THE COURT: Were you notified by the
11 defendant that their counsel couldn't be
12 present?

13 MR. BOSTANY: No, I was notified that they
14 did not want to produce the witness that day.
15 Mr. Brown never contacted us nor anyone from
16 his firm.

17 THE COURT: Mr. Bostany, you are telling
18 me as an officer of the court that to this day,
19 you were never told that this was not a
20 convenient day for defense counsel?

21 MR. BOSTANY: Judge, I don't know --

22 THE COURT: That's a yes or no

23 Mr. Bostany.

24 MR. BOSTANY: It's possible that a letter
25 came in indicating that, I not am going to say

J. Ploshnick

1 that it didn't. I wasn't the person handling
2 the incoming mail, only the critical things
3 were brought to me and so I don't want to
4 certify as an officer of the court that there
5 is not a letter that one of my associates might
6 have received that said that the Defendant's
7 attorneys thought this day was inconvenient. I
8 am afraid to do that, Judge.

9 THE COURT: All right, Mr. Brown?

10 MR. BROWN: We received this notice of
11 deposition, we did in fact contact the witness,
12 there does seem to be some dispute as to
13 whether or not he consented to have us appear,
14 but in any event the critical issue is that
15 although we are local counsel, the main defense
16 counsel is based in Texas.

17 We sent written notice that Counsel could
18 not appear from Texas on this date. We asked
19 for new dates and none were given and really,
20 totally by accident, we found out on Friday
21 evening that this deposition, despite our
22 written notice was going forward today and the
23 Texas Counsel, who really are counsel for the
24 company in this matter, and would know the
25 facts -- I am literally appearing here with

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1 just a blank pad, are not present, and we told
2 them, we were not going to be present.

3 THE COURT: When did you tell them and
4 how?

5 MR. BROWN: It was by letter because I
6 rushed down here. We sent a written notice, I
7 believe within one week after the receipt of
8 the Notice of Deposition that asked that it be
9 rescheduled to a convenient date.

10 MR. BOSTANY: Your Honor, the only notice
11 that I am aware of that came regarding that was
12 on Friday evening after we all had left for the
13 day and it was just brought to our attention
14 this morning.

15 THE COURT: Mr. Bostany, you are now
16 changing your story. Five minutes ago you told
17 me that you couldn't tell me whether your
18 office had received a letter saying this was
19 not a convenient day. Now you want me to
20 believe otherwise.

21 MR. BOSTANY: I didn't want to certify --
22 look if Mr. Brown is certifying that he did
23 send us that notice a week ago.

24 THE COURT: No, he said he sent it a week
25 after the Notice of Deposition was served.

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J. Plosnick

1 MR. BOSTANY: I think he said it might
2 have been sent, I am not sure that he is sure

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3 of that either.

4 MR. BROWN: We are putting together some
5 motion papers right now, Your Honor,
6 unfortunately this is last minute.

7 THE COURT: Mr. Brown, I will ask you the
8 same question, are you telling me as an officer
9 of the court that a letter was sent?

10 MR. BROWN: Yes.

11 THE COURT: And it was sent when?

12 MR. BROWN: I believe it was within the
13 week or ten days immediately after receipt of
14 the Notice of Deposition.

15 THE WITNESS: All right, the deposition is
16 not going forward today. Gentlemen, work out a
17 mutually convenient day.

18 MR. BOSTANY: Your Honor, since the
19 witness is here and Mr. Brown is not
20 representing him and Mr. Brown is here, and I
21 am going to be asking the questions, and the
22 witness is going to be answering them, I think
23 that the witness should be heard from since he
24 is not represented by counsel as to how
25 convenient it is for him to come back for

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J. Ploshnick

1 apparently no reason, because I don't see
2 how --

3 THE COURT: There is reason, the reason
4 is, Mr. Bostany, that your office ignored a
5 letter from your adversary and didn't act in a
6 way that counsel is supposed to act with
7 respect to one another. Your office was

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8 inconsiderate and cavalier.

9 MR. BOSTANY: The letter came in that I am
10 aware of, I found out about this morning, it
11 came in Friday night --

12 THE COURT: We are not doing this all over
13 again. Mr. Brown has told me within a week or
14 ten days after you noticed the deposition in
15 February his office wrote and told you that it
16 was not a convenient date and asked you for
17 dates to reschedule it. I asked you whether
18 you were denying receipt of such a letter and
19 you said no, because you couldn't speak for
20 your associate who may have received it. As
21 far as I am concerned, it was sent.

22 MR. BOSTANY: I just had a couple of
23 seconds to look through the file and the only
24 notice was the one that came in on Friday night
25 that I got this morning. I am sorry I couldn't

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J. Ploshnick

1 certify when you had asked Judge, but I had not
2 thoroughly looked at the file and now I have.
3 There was only one notice, Judge, and I
4 apologize I didn't give you this answer
5 earlier, and that it came in late Friday night
6 and I got it this morning after the witness had
7 already come, and I am sorry I didn't answer
8 that question earlier, Judge, but that's the
9 only notice that was sent and I think it would
10 be unfair, Judge, and you are fair to all
11 parties in every case that I have had, and I

12 just think it would be unfair to require this
13 witness who is not represented and took off
14 from work today to come back when Mr. Brown is
15 here.

16 THE COURT: Mr. Bostany would you like --
17 where are you physically now?

18 MR. BOSTANY: I am in my office right
19 downtown.

20 THE COURT: And Mr. Brown, where are you?

21 MR. BROWN: At his office as well.

22 THE COURT: And where are your respective
23 files and associates?

24 MR. BROWN: Mine is midtown on 52nd
25 Street.

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J. Ploshnick

1 THE COURT: Would you like to come down to
2 Court at 12:00 and we will have a hearing with
3 witnesses on what was sent and when it was
4 received? I am prepared to do that.

5 MR. BROWN: I really think it is a waste
6 of Your Honor's time.

7 THE COURT: I do to, but I am going to
8 give Mr. Bostany, if he wants it, his
9 opportunity. We can do a little put up or shut
10 up Mr. Bostany, and that applies to both of
11 you.

12 MR. BOSTANY: And if it turns out that the
13 only notice was Friday night and it was
14 received this morning, then we can go forward
15 with today's deposition?

16 THE COURT: We will see, but at least I
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17 will be better informed.

18 MR. BOSTANY: Okay, then I accept that and
19 what should we do with Mr. Ploshnick?

20 THE COURT: Send him out for coffee, do
21 what you want. I am sorry he is being
22 inconvenienced, but it certainly isn't my
23 fault.

24 MR. BOSTANY: Absolutely not, Judge.

25 MR. BROWN: Your Honor, we will be at your

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J. Ploshnick

1 chambers at noon.

2 THE COURT: Can you get whatever you need
3 by noon?

4 MR. BROWN: I certainly will make every
5 effort, Your Honor.

6 THE WITNESS: Okay, and if this turns out
7 to be unnecessary, whoever caused it is going
8 to pay for it, just so we are clear.

9 MR. BROWN: Thank you, Your Honor.

10 MR. BOSTANY: Thank you, Judge.

11 MR. BROWN: Do you understand what
12 happened?

13 THE WITNESS: I will listen to Mr. Bostany
14 right now, because again your whole approach
15 and attitude is a little aggressive, so I'd
16 rather not start that with you.

17 So what is the deal, basically?

18 MR. BOSTANY: Mr. Brown asked the Judge to
19 postpone today, indicating that he did not have
20 adequate opportunity -- or indicating that he

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wanted actually another date and that he sent
us notice of that some time ago and the Judge
sympathized with that and indicated that if the
notice to postpone was sent, in fact, a while
ago that we should have accommodated the

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J. Ploshnick

1 attorneys for the defendant.

2 My file shows that the only notice we got
3 was sent Friday evening, late Friday after I
4 left. I left approximately 3:00 on Friday, so
5 the thing is that Judge Kaplan wants to know
6 who is telling the truth here. Is Mr. Brown
7 telling the truth that his letter was sent a
8 long time ago or was the letter sent on Friday.

9 THE WITNESS: okay.

10 MR. BOSTANY: Because Judge Kaplan doesn't
11 have the letters in front of him, he is asking
12 the attorneys to obtain their letters and bring
13 them to the Court at 12:00 noon so he can see
14 for himself what the story is.

15 THE WITNESS: And if that should prove to
16 be either true or false regardless of the
17 outcome, let's say it proves the fact that
18 there was no letter produced, would the:
19 deposition being happening after that?

20 MR. BOSTANY: I asked him that question as
21 you heard, he said -- the Judge said we will
22 see at 12:00 noon and that will determine what
23 we do with the deposition.

24 THE WITNESS: So I am stuck for the day
25 basically.

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J. Ploshnick

1 MR. BOSTANY: Well, you are invited to
2 attend this 12:00 noon appearance.

3 THE WITNESS: There is no need for me to
4 be there.

5 MR. BOSTANY: So that's it, sorry about
6 that.

7 (Whereupon, there was a brief pause in the
8 deposition.)

9 Mr. Ploshnick was on his way out of the
10 office and blurted out he is only available in
11 the next 8 weeks, and when is that?

12 (Continued on next page.)

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J. Ploshnick

1 THE WITNESS: Monday, the 10th of March
2 and after that it's going to be the week of

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3 June 16th.

4 MR. BOSTANY: Thank you.

5 (Time Noted: 11:00 p.m.)

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8 _____
9 Jeffrey Plosnick

10 Subscribed and Sworn to before me
11 the day of 2008

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14 _____
15 Notary Public

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2 C E R T I F I C A T E

3 I, RENEE BELMAR, hereby certify that the Examination Before
4 Trial, of Jeffrey Plosnick was held before me on the 3rd day of
5 March, 2008; that said witness was duly sworn before the
6 commencement of his testimony; that the testimony was taken
7 stenographically by myself and then transcribed by myself; that the

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8 party was represented by counsel as appears herein;

9 That the within transcript is a true record of the Examination
10 Before Trial of said witness;

11 That I am not connected by blood or marriage with any of the
12 parties; that I am not interested directly or indirectly in the
13 outcome of this matter; that I am not in the employ of the counsel.

14 IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day
15 of March, 2008.

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RENEE BELMAR

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